No. 13890

In the United States Court of Appeals for the Ninth Circuit

CONSOLIDATED FREIGHTWAYS, INC., a corporation,
Appellant,

vs.

UNITED TRUCK LINES, INC., a corporation,
Appellee.

APPELLANT'S BRIEF

Appeal from the Order of Dismissal of the District Court of the United States for the District of Oregon

HON. GUS J. SOLOMON, Judge

FILED
OCT 22 1953
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INDEX

Page

STATEMENT OF THE CASE 1

POINTS AND AUTHORITIES 4

POINT I 4

A COMPLAINT ALLEGING A VIOLATION OF THE FEDERAL MOTOR CARRIER ACT TO PLAINTIFF'S MONETARY DAMAGE PRESENTS A FEDERAL QUESTION EVEN THOUGH THE ACT DOES NOT SPECIFICALLY PROVIDE FOR SUCH DAMAGES.

ARGUMENT 4

POINT II 9

THE FEDERAL MOTOR CARRIER ACT BY RESERVING COMMON LAW REMEDIES CREATED A FEDERAL RIGHT COGNIZABLE IN A DISTRICT COURT AS A FEDERAL QUESTION.

ARGUMENT 10

CONCLUSION 19

EXHIBIT A

PLAINTIFF'S PLEADINGS IN THE PURITAN CASE 20

EXHIBIT B

PLAINTIFF'S PLEADINGS IN THE SONMAN CASE 34

INDEX OF CASES

Pages

Artic Roofings v. Travers, 32 A. (2d) 559.... 10, 19

Baird v. Franklin, 141 F. (2d) 238........... 4, 5, 9

Bell v. Hood, 327 U.S. 678..................4, 6, 7, 8

Fratt v. Robinson, 203 F. (2d) 627.......4, 5, 7, 8, 9

Gully v. First National Bank, 299 U.S. 109.... 10, 11

In re Melekov, 114 F. (2d) 727.............. 3

Penna. R.R. v. Puritan Coal Co., 237 U.S. 121 ....10, 16, 18

Plaintiff's Pleadings (Exhibit A)......... 10, 17

Penna. R.R. v. Sonman Coal Co., 242 U.S. 120 ....10, 12,15, 16, 18

Plaintiff's Pleadings (Exhibit B)......... 10, 17

Powers v. Cady, 9 F. (2d) 458............... 10, 18

Puerto Rico v. Russell & Co., 228 U.S. 476.... 10, 11

Union Transfer Co. v. Renstrom, 37 N.W. (2d) 383 .... 10, 19

TABLE OF AUTHORITIES CITED

Pages

Interstate Commerce Act (49 U.S.C.A. Sec. 22) 4, 9, 10, 11, 12, 15, 16, 18, 19

Federal Motor Carrier Act (49 U.S.C.A. Sec. 301, et seq.) 3

Interstate Commerce Act (49 U.S.C.A. Sec. 317(b)) 3, 9, 10, 11, 18

Interstate Commerce Act, Part I (49 U.S.C.A. Sec. 1, et seq.) 4

Interstate Commerce Act, Part II (49 U.S.C.A. Sec. 301 et seq.) 4

Securities and Exchange Act of 1934 (15 U.S.C.A. Sec. 78(a) et seq.) 4, 8

Securities and Exchange Act (15 U.S.C.A. Sec. 78j(b)) 5

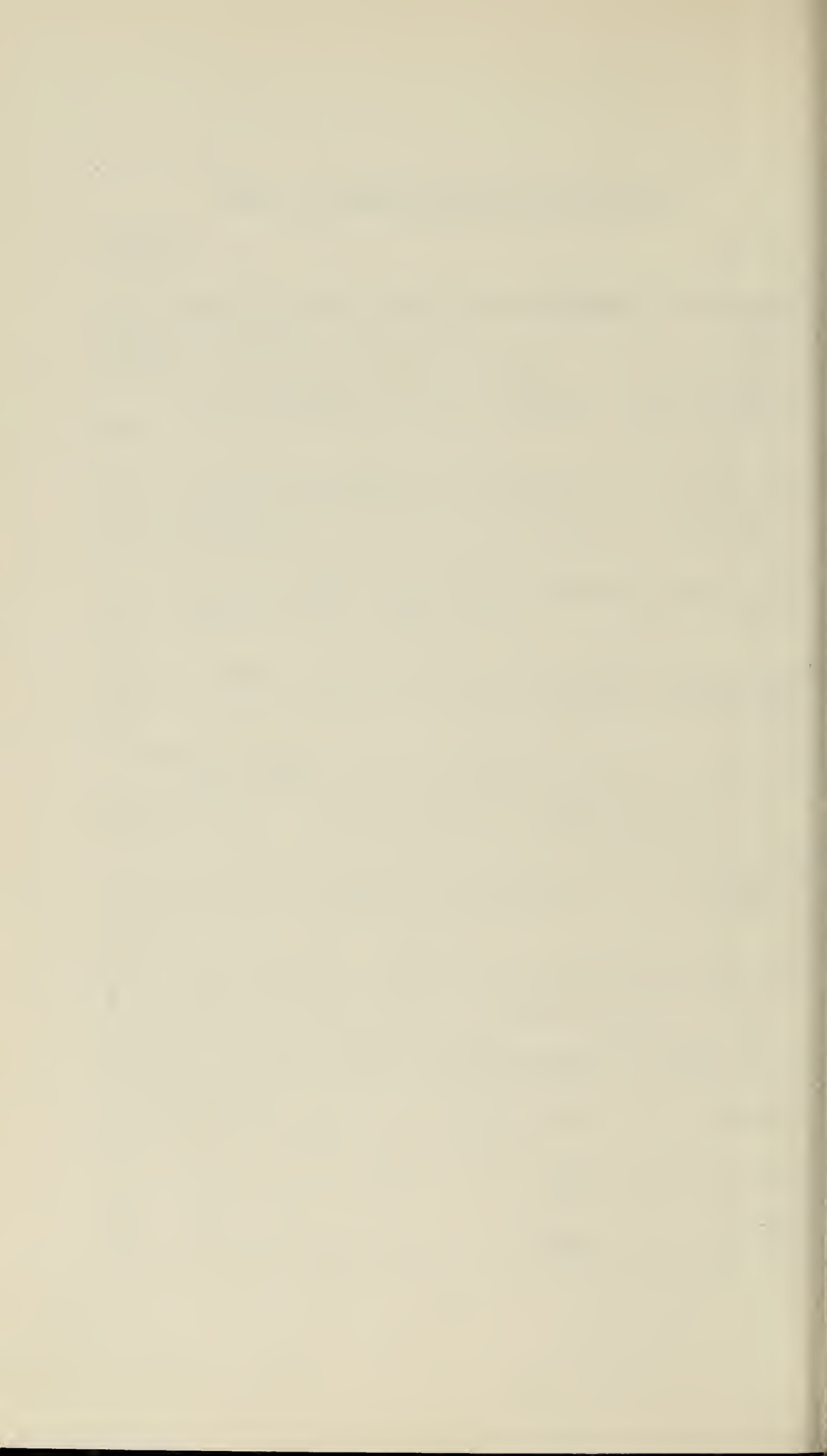
Securities Exchange Act, Secs. 9(e), 16(b) and 18(a) 8

Securities Exchange Act, Sec. 10(b) 5, 8, 9

28 U.S.C.A. Sec. 41(1), (7) 4

28 U.S.C.A. Sec. 1331 7

28 U.S.C.A. Sec. 1337 8



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APPELLANT'S BRIEF

Appeal from the Order of Dismissal of the District Court of the United States for the District of Oregon

Hon. Gus J. Solomon, Judge

STATEMENT OF THE CASE

The complaint before the District Court, Paragraph II, alleges that plaintiff (appellant here) and defendant (appellee here) are motor carriers subject in their interstate operations to the jurisdiction of the Interstate Commerce Commission under the

Interstate Commerce Act. By Paragraph IV plaintiff asserts it operated interstate over a designated highway by express permission of the Interstate Commerce Commission. By Paragraph V it is claimed that defendant operated interstate over the same highway without such permission. Paragraph VI says that defendant's illegal operation diverted traffic from plaintiff and Paragraph VII claims that plaintiff is entitled to monetary damages because of "such unlawful operations" (Tr. 3-6). These allegations present a clear claim of the violation of a right federally protected under the Interstate Commerce Act. There is no diversity presented by the record, both parties being Washington corporations, so the only question before this Court is, does the complaint present a federal question?

Appellee, United, moved to dismiss contending that, although the claim arises as a result of the alleged violation of a Federal statute, it is a common law cause of action; the right to freedom from illegal competition. We agree that the right of a franchise holder to recover damages from one who unlawfully infringes is a common law right so there is no issue here on that point and we have not briefed it. If, however, the Court is interested in the question, it is spelled out in detail, with authorities, in the record (Tr. 7-10).

The District Court allowed the motion and ordered a dismissal holding that no federal question is involved (Tr. 15-16). Though the order says it is "without prejudice" (Tr. 20), the oral opinion upon which it was based (Tr. 14-19) categorically denies appellant's right to assert a claim for damages based upon appellee's violation of the Federal Motor Carrier Act (49 U.S.C.A. Sec. 301 et seq.). The order is thus, in effect, a final judgment so that this Court has jurisdiction of this appeal. *In re Melekov,* 114 F. (2d) 727 (C.C.A. 9), and cases there cited.

Appellant contends that the complaint presents a federal question on either of two grounds which are set forth herein. Our first point is that this action for money damages caused by a violation of the Interstate Commerce Act presents a federal question notwithstanding the fact that the statute does not expressly confer such right. The second point is that the Act (49 U.S.C.A. Sec. 317(b)) expressly reserves all common law remedies and thereby incorporates them into the Act.

POINTS AND AUTHORITIES

POINT I

A COMPLAINT ALLEGING A VIOLATION OF THE FEDERAL MOTOR CARRIER ACT TO PLAINTIFF'S MONETARY DAMAGE PRESENTS A FEDERAL QUESTION EVEN THOUGH THE ACT DOES NOT SPECIFICALLY PROVIDE FOR SUCH DAMAGES.

Interstate Commerce Act, Part I (49 U.S.C.A. Sec. 1, et. seq.);
id., Part II (49 U.S.C.A. Sec. 301 et. seq.);
Fratt v. Robinson, 203 F. (2d) 627;
Securities Exchange Act of 1934 (15 U.S.C.A. Sec. 78(a) et. seq.);
Baird v. Franklin, 141 F. (2d) 238;
Bell v. Hood, 327 U.S. 678;
28 U.S.C.A. 41(1), (7) (28 U.S.C.A. Secs. 1331, 1337).

Argument

The District Court correctly pointed out that Sections 8 and 9 of Part I of the Interstate Commerce Act dealing with railroads (49 U.S.C.A. Sec. 1, et. seq.) specifically provide for a right to proceed in Federal Court for money damages to any person aggrieved by any violation of that chapter (the railroad chapter) of the Act. It then took the position that since the Motor Carrier Act does not contain

similar provisions no federal question is presented by appellant's complaint.

We can find no case holding that a complaint alleging a violation of the Federal Motor Carrier Act and seeking money damages presents a Federal question. We believe the exact question has never before been raised. There is, however, an exactly comparable case decided in this Court arising in connection with the Securities and Exchange Act.

That case, which we feel is indistinguishable in principle from this case is *Fratt v. Robinson,* 203 F. (2d) 627. It involved a suit for money damages resulting from a violation of Section 10(b) of the Securities and Exchange Act (15 U.S.C.A. Sec. 78j(b)). That section does not provide for money damages though other sections do. However, this Court squarely held that a Federal District Court had jurisdiction to award damages for a violation of Section 10(b). 203 F. (2d) at p. 631). In so doing this Court adopted the reasoning of Judge Clark of the Second Circuit in *Baird v. Franklin,* 141 F. (2d) 238, to the effect that the entertaining of such jurisdiction would make more effective the general purposes of the Act. This Court said:

> "* * * We can think of nothing that would tend more toward discouraging trading off the established business markets and out of govern-

> mental regulation or that would more certainly tend to deter fraudulent practices in security transactions and thus make the Act more 'reasonably complete and effective' than the right of defrauded sellers or buyers of securities to seek redress in damages in federal courts * * *" (203 F. (2d) at p. 632).

This Court's final comment in holding that a Federal District Court had jurisdiction to award money damages even though the portion of the statute alleged to have been violated did not expressly provide for them was:

> "* * * It is not unusual for courts to take jurisdiction of civil remedies where the legislature has spoken only of criminal sanctions." (203 F. (2d) at p. 633.)

In reaching the result it did in the *Fratt* case, this Court relied heavily on *Bell v. Hood,* 327 U.S. 678, which had been appealed from this Court. That case involved a claim for money damages against officers of the Federal Bureau of Investigation because of their alleged violations of the Fourth and Fifth Amendments to the United States Constitution. The Supreme Court held there was jurisdiction to try such claim and that the claim *presented a Federal question.* This Court in the *Fratt* opinion quoted

from the Supreme Court's opinion in the *Bell* case on the Federal question point as follows:

> "* * * where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and *a federal statute provides for a general right to sue for such invasion,* federal courts may use any available remedy to make good the wrong done. Whether the petitioners are entitled to recover depends upon an interpretation of 28 U.S.C §41(1) and on a determination of the scope of the Fourth and Fifth Amendments' protection from unreasonable searches and deprivations of liberty without due process of law. Thus, *the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another. For this reason the District Court has jurisdiction.*" (Footnote 18, p. 633, 203 F. (2d); italics added.)

In the *Bell* case, the *Fratt* case and in the case at bar the statute or Constitution does not specifically say that a party damaged because another violated the law has a right to bring an action for damages in the Federal Court. But the *Bell* and *Fratt* cases hold that such a case arises under the "Constitution, laws or treaties of the United States" (28 U.S.C.A. Sec.

1331). We pleaded and rely upon 28 U.S.C.A. Sec. 1337 which confers jurisdiction, so far as here material, "* * * of any civil action arising under any Act of Congress regulating commerce * * *". Accordingly, since the Supreme Court in the *Bell* case thought a Federal question was presented by a complaint seeking money damages under Sec. 1331 and the Fourth and Fifth Amendments to the United States Constitution, though neither the Constitution nor the statute expressly provides for them, it seems obvious that a Federal question is presented here where Sec. 1337 and the Federal Motor Carrier Act are involved, neither providing expressly for money damages.

We have seen that this Court in the *Fratt* opinion held upon the authority of the *Bell* case that a complaint seeking money damages for violation of a Federal statute raised a Federal question even though the portion of the statute which was alleged to have been violated did not provide for damages for that violation. We think a comparison of the Securities Exchange Act of 1934 which was involved in the *Fratt* opinion with the Federal Motor Carrier Act involved in this case will show that what was said in the *Fratt* opinion applies here. As footnote 13 to the *Fratt* opinion (p. 632 of 203 F. (2d)) correctly points out, Sections 9(e), 16(b) and 18(a) of the

Securities Exchange Act, all provide rights to damages for violations of *those* sections. Section 10(b), the section involved in the *Fratt* opinion, does not. Even as against the maxim *expressio unius est exclusio ulterius,* Judge Clark in *Baird v. Franklin* had held that the violation of another "non-damage" section of the Act did not foreclose a right to money damages. As to Section 10(b), this Court said it agreed with Judge Clark.

Except for its reservation of common law remedies (dealt with in Point II below), the Federal Motor Carrier Act is silent as to any private remedy for a violation of any of its provisions. All it does is provide for criminal penalties and injunctive remedies to be sought by the Commission. Accordingly, the *expressio unius* rule is no barrier here, and the rule of the *Fratt* opinion applies *a fortiori.*

POINT II

THE FEDERAL MOTOR CARRIER ACT BY RESERVING COMMON LAW REMEDIES CREATED A FEDERAL RIGHT COGNIZABLE IN A DISTRICT COURT AS A FEDERAL QUESTION.

POINTS AND AUTHORITIES

Interstate Commerce Act, Part II, Sec. 317(b) (49 U.S.C.A. Sec. 317(b));
id., Part I, Sec. 22 (49 U.S.C.A. Sec. 22);

Puerto Rico v. Russell & Co., 228 U.S. 476;
Gully v. First National Bank, 299 U.S. 109;
Penna R.R. v. Sonman Coal Co., 242 U.S. 120;
Penna R.R. v. Puritan Coal Co., 237 U.S. 121;
Plaintiff's pleadings in the *Puritan* and *Sonman* cases (Exs. A and B hereto);
Powers v. Cady, 9 F. (2d) 458;
Artic Roofings v. Travers, 32 A. (2d) 559 (Del. 1943);
Union Transfer Co. v. Renstrom, 37 N.W. (2d) 383 (Neb. 1949).

Argument

The proviso to Sec. 317(b) of the Federal Motor Carrier Act reads as follows:

> "* * * Provided, That the provisions of Sections 1(7) and 22 of this title shall apply to common carriers by motor vehicles subject to this chapter." (49 U.S.C.A. 317(b)).

Sec. 22, so far as here material, reads as follows:

> "* * * and nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies; * * *" (Act of 1887, now 49 U.S. C.A. Sec. 22.)

It goes without saying that *if* Sec. 22 was intended to create a federal right, the District Courts have

jurisdiction to enforce it. The District Court in this case expressly held that it was not so intended (Tr. first full para. p. 18). In reaching that conclusion the Court relied upon *Puerto Rico v. Russell & Co.*, 228 U.S. 476, and *Gully v. First National Bank,* 299 U.S. 109. Both of these cases stand for the proposition that where an Act of Congress *permits* a state tax to be levied, the right to be established is one created by the State and that the Federal enabling act does not create a Federal right and hence a federal question. In this case Sec. 22 is *Congressional legislation* so the *Puerto Rico* and *Gully* cases have no application.

Our first reason for contending that in enacting Sec. 22 Congress intended to create a federal right is that, even if Congress had not so enacted, it would have been possible to assert a common law action for illegal competition in a state court. Accordingly, if Congress wasn't trying to create a federal cause of action, it is difficult to see what Congress was trying to do. It must be presumed that the words were intended for some purpose or to accomplish something.

However, we are not relying merely on logic. Except for the District Court's opinion in this case, Sec. 317(b) of the Federal Motor Carrier Act has

never been construed by a Federal Court. The scope and meaning of Sec. 22 has been considered many times. The clearest statement we have been able to find is that in *Penna. R.R. v. Sonman Coal Co.,* 242 U.S. 120. That involved a common law action for failure to deliver coal cars and came to the Court from the Supreme Court of Pennsylvania. True, the carrier had been held liable in a State, not a Federal, Court. But the Court held it to have also been suable in a Federal Court as follows:

> "It is true that §§8 and 9 deal with the redress of injuries resulting from violations of the act and give the person injured a right either to make complaint to the Interstate Commerce Commission or to bring an action for damages in a federal court, but not to do both. If the act said nothing more on the subject it well may be that no action for damages resulting from a violation of the act could be entertained by a state court. But the act shows that §§8 and 9 did not completely express the will of Congress as respects the injuries for which redress may be had or the modes in which it may be obtained, for §22 contains this important provision: 'Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies.' The three sections, if broadly construed, are not altogether harmonious, and yet it evidently is intended that all shall be operative. Only by read-

ing them together and in connection with the act as a whole can the real purpose of each be seen. They often have been considered and what they mean has become pretty well settled. Thus we have held that a manifest purpose of the provision of §22 is to make it plain that such 'appropriate common law or statutory remedies' as can be enforced consistently with the scheme and purpose of the act are not abrogated or displaced, *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.,* 204 U.S. 426, 446-447; that this provision is not intended to nullify other parts of the act, or to defeat rights or remedies given by earlier sections, but to preserve all existing rights not inconsistent with those which the act creates, *Pennsylvania R.R. Co. v. Puritan Coal Co.,* 237 U.S. 121, 129; that the act does not supersede the jurisdiction of state courts in any case, new or old, where the decision does not involve the determination of matters calling for the exercise of the administrative power and discretion of the Interstate Commerce Commission, or relate to a subject as to which the jurisdiction of the federal courts is otherwise made exclusive, *ibid.* 130; that claims for damages arising out of the application, in interstate commerce, of rules for distributing cars in times of shortage, call for the exercise of the administrative authority of the Commission where the rule is assailed as unjustly discriminatory, but where the assault is not against the rule but against its unequal and discriminatory application, no administrative question is presented and the claim *may be prosecuted in either a federal or a state court*

without any precedent action by the Commission *ibid.* 131-132; and that, if no administrative question be involved, as well may be the case, a claim for damages for failing upon reasonable request to furnish to a shipper in interstate commerce a sufficient number of cars to satisfy his needs, *may be enforced in either a federal or a state court* without any preliminary finding by the Commission, and this *whether the carrier's default was a violation of its common law duty existing prior to the Hepburn Act of 1906, or of the duty prescribed by that act, ibid.* 132-135; *Eastern Ry. Co. v. Littlefield,* 237 U.S. 140, 143; *Illinois Central R.R. Co. v. Mulberry Hill Coal Co.,* 238 U.S. 275, 283; *Pennsylvania R.R. Co. v. Clark Coal Co.,* 238 U.S. 456, 472.

"Applying these rulings to the case in hand, we are of opinion that a state court could entertain the action consistently with the Interstate Commerce Act. Not only does the provision in §22 make strongly for this conclusion, but a survey of the scheme of the act and of what it is intended to accomplish discloses no real support for the opposing view. With the charge of unjust discrimination eliminated, the ground upon which a recovery was sought was that for a period of four years, during which the conditions were normal, the carrier had failed upon reasonable demand to supply to a shipper in interstate commerce a sufficient number of cars to transport the output of the latter's coal mine. Assuming that the conditions were normal and the demand reasonable, it was the duty of the carrier to have furnished

the cars. *That duty arose from the common law* up to the date of the amendatory statute of 1906, known as the Hepburn Act, and thereafter from a provision in that act which, for present purposes, may be regarded *as merely adopting the common law rule.* There was evidence tending to show, and the jury found, that the conditions in the coal trade were normal and the demand for the cars reasonable. Indeed, without objection from the carrier, the court said when charging the jury: 'There is no testimony disputing the claim of the plaintiff that these were normal times.' The carrier insisted that the jury found that the carrier had a generally ample car supply for the needs of the coal traffic under normal conditions, and the jury further found that the failure to furnish the cars demanded was without justifiable excuse. Thus far it is apparent that no administrative question was involved—nothing which the act intends shall be passed upon by the Commission either to the exclusion of the courts or as a necessary condition to judicial action." (242 U.S. at pp. 123-126, italics added.)

As the above italics show, the Supreme Court in the *Sonman* case clearly held that the violation of a common law right gave a remedy to the aggrieved person in either a state or Federal Court. The *Abilene Cotton Oil* case referred to in the above quotation does not affect the principle; all it held was that §22 did not preserve such common law

remedies as were inconsistent with the Act itself and that therefore a shipper might not attack a rate, rule or practice without prior resort to the I.C.C. The *Puritan Coal* case referred to in the quotation is also exactly in point here. There the shipper complained that the carrier's own rule for car allocation in time of shortage was discriminatorily applied. The Court said:

> "But if the carrier's rule, fair on its face, has been unequally applied and the suit is for damages, occasioned by its violation or discriminatory enforcement, there is no administrative question involved, the courts being called upon to decide a mere question of fact as to whether the carrier has violated the rule to plaintiff's damage. *Such suits though against an interstate carrier for damages arising in interstate commerce, may be prosecuted either in the state or Federal Courts.*" (237 U.S. at pp. 131-2, italics added.)

We recognize, of course, that the Supreme Court's view, as stated in the *Sonman* and *Puritan* cases, that common law remedies reserved by Sec. 22 may be asserted in either a State or a Federal Court is dicta because the point in those cases was whether the remedies could be asserted in a state court. If those cases had been diversity of citizenship cases, it might well be urged that the Court's

dicta mean nothing because, of course, the common law remedy could be asserted in a diversity case just because it was a diversity case. However, the fact is that both cases were *non-diversity cases* as is shown by Exhibits A and B to this brief which are replicas of certified copies of plaintiff's pleadings in those cases on file in this Court. That they were non-diversity cases is made clear from an examination of Exhibits A and B. Page 26 of Exhibit A states that plaintiff and defendant are Pennsylvania corporations and page 33 of that exhibit states that defendant moved to dismiss and no answer was filed. Accordingly, non-diversity was conceded. Page 43 of Exhibit B states that plaintiff is a Pennsylvania corporation. Exhibit B does not expressly say that defendant is a Pennsylvania corporation, but page 45 of Exhibit B says that defendant is governed by the laws of that State. Moreover, Pennsylvania Railroad was defendant in both cases. Since Exhibit A is dated 1908 and alleges that defendant was a Pennsylvania corporation there is no reason to suppose that in 1909, the date of Exhibit B, it was not. Exhibit B, page 50, states that defendant moved to dismiss and no answer was filed.

The significance of the Supreme Court's saying, even by way of dicta, in a non-diversity case that

the common law remedies reserved by Sec. 22 might be asserted in a Federal Court is, we think, obvious. The Supreme Court was saying that Sec. 22 created a Federal right and that a claim under Sec. 22 accordingly presented a Federal question. No citation of authority is required for the proposition that a complaint in a Federal Court must show diversity or present a Federal question.

Powers v. Cady, 9 F. (2d) 458 (D. Ct. W.D. Louisiana, 1925), supports the view that Sec. 22 created a Federal right. That was an action for failing to furnish railroad cars. The contention was made that preliminary resort had to be made to the Interstate Commerce Commission. Relying on the *Puritan* and *Sonman* cases, the Court rejected this contention and squarely held that Sec. 22 applied. Here is a holding then, not dicta, that Sec. 22 may be asserted in a Federal Court. 9 F. (2d) at p. 462. While the citizenship of the parties does not appear in that case, it is obvious, as explained above, that had there been diverse citizenship, the Court would have had jurisdiction once it determined the matter was not for the Commission. Only in the absence of diversity does Sec. 22 become important.

The State Courts have recognized that Sec. 317(b) of the Federal Motor Carrier Act which re-

tains Sec. 22 does preserve common law rights and have enforced them. *Artic Roofings v. Travers,* 32 A. (2d) 559 (Del., 1943); *Union Transfer Co. v. Renstrom,* 37 N.W. (2d) 383 (Neb. 1949). These cases in no way suggest that a Federal Court would not have jurisdiction.

CONCLUSION

The Court should hold either that (1) the complaint by alleging a violation of the Federal Motor Carrier Act presents a Federal question or, (2) that the Act's reservation of common law remedies presents a Federal question. The Court should then reverse the Order of Dismissal (Tr. 19-20) and remand the case to the District Court.

Respectfully submitted,

JAMES P. CRONAN, JR.,
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Attorneys for Appellant.

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PURITAN COAL MINING COMPANY

vs.

PENNSYLVANIA RAILROAD

No. 221 May Term, 1908

PLAINTIFF'S STATEMENT

The Puritan Coal Mining Company files this statement of its claim and demand against the Pennsylvania Railroad Company, the defendant, and for cause of action alleges as follows, viz:—

First:—That the Puritan Coal Mining Company is a corporation organized and existing under the laws of Pennsylvania, and from the day of A.D. 1902, to the day of A.D. 1906, was the owner of a leasehold upon large body of bituminous coal, situate in the County of Cambria, State of Pennsylvania, and was engaged in the business of mining, producing, shipping and selling bituminous coal thereon and therefrom, to points and places within the territorial limits of Pennsylvania.

SECOND:— That the Pennsylvania Railroad Company is a corporation existing under the laws

of Pennsylvania, by an Act of Assembly approved the 13th day of March, 1946, and is by virtue of the laws and constitution of the said State, a common carrier engaged in the transportation of passengers and property, under a common control, management or arrangement for a continuous carriage of shipment from points and places within the State of Pennsylvania, to other points and places within the said State, and was and is engaged in carrying, hauling and transporting bituminous coal from points and places along its main line and branches within said State, to other points and places within said State.

THIRD:—That the mines of the plaintiff and the mines of other shippers of bituminous coal, especially those of the Berwind-White Coal Mining Company are situate along or near the line or branch line of the defendant company in the County of Cambria, and that a large part of the coal mined and shipped from the premises controlled by the plaintiff during the period from the 1st day of April A. D. 1902, to the 1st day of Jany, A. D. 1905, was shipped over said main line and branch of the defendant company by continuous carriage or shipment, and under the control and management of the defendant company, to points and places within the State of Pennsylvania.

FOURTH:— That the defendant company during all of the period aforesaid arbitrarily assumed the right to estimate and determine the capacity of the plaintiff to produce coal from its mines, and did in fact estimate, fix and determine, and publish the capacity of its mines, and did estimate, fix and determine the percentage of coal cars plaintiff was to receive each and every working day at the mines for use in the carriage and transportation of its product, and did in like manner estimate, fix and determine the producing capacity of all other mines upon its main line and branch lines, and did so fix and determine the percentage of coal cars the said several operators and owners of mines were entitled to have and receive for the carriage and transportation of the product of their mines.

Fifth:— That the duty and obligation of the defendant company as a common carrier and a public highway was to furnish coal cars to the plaintiff upon a basis of equality in proportion to its rated capacity to mine and produce coal, and according to the measure of duty fixed by itself in determining the percentage of the number of coal cars to which plaintiff was entitled out of the whole number the defendant has for daily distribution; but the defendant company disregarding its duty and obligation which it owed to the plaintiff, did unduly and

unreasonably, as well as unlawfully and unjustly, neglect and refuse to furnish the plaintiff with its pro rata share of the coal cars it had for daily distribution, and did subject the plaintiff to undue and unreasonable disadvantage and prejudice, in that it favored and did unduly and unreasonably discriminate in favor of the Berwind-White Coal Mining Company, in that it did in the daily distribution of its coal cars, distribute and give to said company five hundred (500) cars before distributing to the plaintiff any cars; and did thereby unjustly and unlawfully deprive the plaintiff of the just and fair amount of cars each day, to which the percentage fixed by the defendant company entitled the plaintiff to receive and would have received, except for said unjust, undue and unreasonable discrimination in favor of said Berwind-White Coal Mining Company.

Sixth:— That the defendant company did also unduly and unreasonably discriminate against the plaintiff and in favor of said Berwind-White Coal Mining Company, to the prejudice and disadvantage of the plaintiff, in that the said defendant did cause to be transferred from its ownership, custody and control, one thousand (1000) steel cars of large capacity, which it had purchased for use in the transportation of bituminous coal into interstate

mordets and places of interstate commerce to the said Berwind-White Coal Mining Company, and did by said transfer and sale deprive the plaintiff from receiving its prorata percentage of said one thousand cars for use in hulling and transporting the product of its mines, to points and places within the State of Pennsylvania.

Seventh:— That during all of said period of time, to wit, from the 1st day of April, A. D., 1902, to the 1st day of January, A. D., 1905, the plaintiff had a large and growing demand for the soft coal which it was mining and producing; that it had during all of said time constant demand and orders for its coal, in excess of the supply of coal cars furnished by the defendant company for transportation of the same to its customers, and could and would have moned and shipped a large amount of coal in excess of what it did mine and ship, to wit, 64587 tons, which it would have sold to its customers therein at a price aggregating F. O. B. cars above costs of producing same the sum of $49906.07 Dollars; but was prevented from so doing by reason of the aforesaid undue and unreasonable discrimination in favor of the a foresaid Berwind-White Coal Mining Company. That because of said undue and unreasonable discriminatory acts, the plaintiff suffered damage and loss in its business of mining

and selling its product in the markest of the soft coal trade and in points and places and to consumers of soft coal within the lines of the State of Pennsylvania and it, therefore, brings this action to recover compensation forsaid loss and damage in the sum of $49936.07 Dollars. with such additional amount as will compensate plaintiff for the delay on part of the defendant Company.

KREBS LIVERWRIGHT.
Attorney

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PURITAN COAL MINING COMPANY

vs.

PENNSYLVANIA RAILROAD COMPANY

No. 221 May T. 1908

I, WILLIAM T. HAGERTY, Prothonotary of the Court of Common Pleas of Clearfield County, do hereby certify that the within is a true and correct copy of the original Statement of the Plaintiff, filed in this office,

IN WITNESS THEREOF, I HEREUNTO SET my hand and the seal of the Court, this 27th day of May, 1953.

(s) Wm. T. Hagerty
WM. T. HAGERTY,
Prothonotary.

SEAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PURITAN COAL MINING COMPANY
against
PENNSYLVANIA RAILROAD COMPANY

No. 221 May Term, 1908

PLAINTIFF'S AMENDED STATEMENT

The Puritan Coal Mining Company files this statement of its claim and demand against the Pennsylvania Railroad Company, the defendant, and for cause of action alleges as follows, to wit:—

FIRST:— That the Puritan Coal Mining Company is a corporation organized and existing under the Laws of Pennsylvania, and from the __________ day of ______________ A. D., 1902, to the ________ day of __________________ A.D. 1908, was the owner of a leasehold upon the large body of bituminous coal situate in the County of Cambria, State of Pennsylvania; and was engaged in the business of mining, producing, shipping and selling bituminous coal thereon and therefrom to various points and places;

SECOND:— That the Pennsylvania Railroad Company is a corporation existing under the laws of Pennsylvania by an Act of Assembly approved the 13th day of March, 1846, and is by virtue of the laws and constitution of the said State a common

carrier engaged in the transportation of passengers and property, and was and is engaged in carrying, hauling and transporting bituminous coal; and undertook and agreed, in consideration of the franchises to it granted by the Commonwealth of Pennsylvania, to give and grant unto the plaintiff the facilities necessary for the transportation of its coal to market without discrimination in favor of other companies, corporations or individuals; and to furnish it with care and motive power without any preference to other companies, corporations or individuals; but the defendant has failed and refused to perform its duty thus imposed upon it in the manner and to the extent hereinafter narrated;

THIRD— That under the Constitution and Laws of this Commonwealth, as well as at common law, the defendant company as a common carrier organized and created for that purpose and engaged in the transportation of bituminous coal, is by law required to furnish and provide at all times during the ordinary conditions and demands of the bituminous coal trade, an adequate and sufficient supply of coal cars owned and in use by it, and to be provided by it for the transportation of bituminous coal over its main line and branches, for the accomodation and use of the persons, firms and corporations engefed in mining and producing bituminois coal

in the regions tributary to defendant's main line and branches; and to let and hire the same to all persons, firms and corporations engaged in mining and producing bituminous coal from bituminous coal regions tributary, as aforesaid, to its main line and branches in the counties of Blair, Cambria, Clearfield, Westmoreland, and Indiana and elsewhere; and to let and hire the same unto the plaintiff in this action. That the defendant company did not, as required by law, provide coal cars adequate and sufficient in quantity to meet the ordinary demands of its patrons, persons, firms and corporations, mining and producing bituminous coal in the regions aforesaid, and did not furnish and provide to the plaintiff such adequate and sufficient supply of coal cars as would enable it to mine, produce and have transported to market, during the orginary conditions and demands of the market for bituminous coal, the amount of coal it could and would have mined, produced and shipped, had defendant company performed its duty in this respect; and that thereby the plaintiff was prevented from mining and producing and having transported to and selling in the market, a large amount of bituminous coal for which it had a demand and market, and which it could and would have mined, produced and caused to be transported had it been furnished with

an adequate and sufficient supply of coal cars for such use and purpose, by reason of which failure in the performance of its duty and legal obligations, the defendant caused the plaintiff to suffer great damage, to wit:— damage in the sum of Two Hundred Sixty Thousand Seven Hundred seventy-seven and 96/100 Dollars.

FOURTH— That the mines of the plaintiff and the mines of other shippers of bituminous coal, especially of the Berwind-White Coal Mining Company, are situate along or near the line, or branch line, of the defendant company in the County of Cambria and adjoining counties, and that a large part of the coal mined and shipped from the premises controlled by the plaintiff, during the period from the 1st day of April, 1902, to the 1st. day of January, 1905, was shipper over said main line and branches of the defendant company;

FIFTH:— That the defendant company, during all of the period aforesaid, arbitrarily assumed the right to estimate and determine the capacity of the plaintiff to produce coal from its mines, and did in fact estimate, fix and determine and publish the capacity of its mines, and did estimate, fix and determine the per centage of coal cars plaintiff was to receive each and every working day at its mines for use in the carriage and transportation of its

product; and did in like manner estimate, fix and determine the producing capacity of all other mines upon its main line and branch lines, and it so fixed and determined the per centage of coal cars the said several operators and owners of mines were entitled to have and receive for the carriage and transportation of the products of their mines:

SIXTH— That the duty and obligation of the defendant company as a common carrier and a public highway, was to furnish coal cars to the plaintiff upon a basis of equality in proportion to its rated capacity to mine and produce coal, and according to the measure of duty fixed by itself in determining the per centage of the number of coal cars to which plaintiff was entitle out of the whole number that defendant had for daily distribution; but the defendant company, disregardeding its duty and obligation which it owed to the plaintiff, did unduly and unreasonably, as well as unlawfully and unjustly, neglect and refuse to furnish the plaintiff with the pro rate share of coal cars which it had for daily distribution, and did subjecy the plaintiff to undue and unreasonable disadvantage and prejudice in that it favored and did unduly and unreasonably discriminate in favor of the Berwind-White Coal Mining Company, in that it did in the daily distribution of its coal cars distribute and give to

said company five hundred cars (500) before distributing to the plaintiff any cars; and did thereby unjustly and unlawfully deprive the plaintiff of the just and fair amount of cars each day which the per centage affixed by the defendant company entitled the plaintiff to receive, and which it would have received except for said unjust, undue and unreasonable discrimination in favor of said Berwind-White Coal Mining Company;

SEVENTH— That the defendant company did also unduly and unreasonably discriminate against the plaintiff and in favor of the said Berwind-White Coal Mining Company, to the prejudice and disadvantage of the plaintiff, in that the said defendant did cause to be transferred from its ownership, custody and control, to the said Berwind-White Coal Mining Company, one thousand (1000) steel cars of large capacity, which it, the defendant, had purchased for use in the transportation of bituminous coal, and did by said transfer and sale deprive the plaintiff from receiving its pro rate per centage of said one thousand cars for use in hauling and transporting the product of its mines:

EIGHTH— That during all of said period of time, from the 1st day of April, 1902, to the 1st day of January, 1905, the plaintiff had a large and

growing demand for the soft coal which it was mining and producing; and it had, during all of said time, constant demand and orders for its coal in excess of what could be moved in the supply of coal cars furnished by the defendant company for transportation of the same to plaintiff's customers, and it could and would have mined and shipped a large amount of coal in excess of what id did mine and ship, all of which it could and would have sold at a price aggregating f.o.b. cars, above the cost of producing same, the sum of Two Hundred Sixty Thousand Seven Hundred seventy-seven and 96/100 Dollars ($260,777.96); but was prevented from so doing by reason of the aforesaid undue and unreasonable discrimination in favor of the aforesaid Berwind-White Coal Mining Company. That said sum of $260,777.96 aggregates the reasonable profit that plaintiff could and would have made upon the coal it reasonably could and would have shipped from its mines in the following amounts, but for defendant's discriminatory acts:—

In 1902	68,501 tons
in 1903,	146,234 Tons
In 1904	83,747 Tons

and because of said undue and unreasonable discriminatory acts of defendants, hereinbefore narrated, the plaintiff suffered damage and loss in its

business of mining and selling its product, as hereinbefore set forth, and it therefore brings this action to recover from the defendant compensation for said loss and damage in the sum of $260,777.96, with such additional amount as will compensate plaintiff for the delay on the part of the defendant company.

KREBS & LIVERWRIGHT
Attorneys for Plaintiff.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
PURITAN COAL MINING COMPANY

VS.,

PENNSYLVANIA RAILROAD COMPANY

No. 221 May T. 1908

I, WILLIAM T. HAGERTY, Prothonotary of the Court of Common Pleas of Clearfield County, do hereby certify that the within is a true and correct copy of the Original Plaintiff's Amended Statement, filed in this office, and we further certify that issue was formed on the Defendant's Petition to dismiss for Want of Jurisdiction and that No Answer to the Amended Statement has been or was filed.

IN WITNESS THEREOF, I, HEREUNTO SET my hand and the seal of the Court, this 27th day of May, 1953.

(s) Wm. T. Hagerty
WM. T. HAGERTY,
SEAL *Prothonotary.*

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SONMAN SHAFT COAL COMPANY

VS

PENNSYLVANIA RAILROAD CO.

No. 322 May Term, 1909

PLAINTIFF'S STATEMENT

The Sonman Shaft Coal Company, the plaintiff in this action, against the Pennsylvania Railroad Company, the defendant, summoned to answer the plaintiff in a plea of trespass, files this statement of claim and seeks to recover damages which it has suffered because of the illegal and wrongful acts of the defendant, and sets forth the following statement of facts as the foundation of its right to recover, to wit:—

FIRST:— That the plaintiff is a corporation organized and existing under the laws of the State of Pennsylvania for the purpose of mining, shipping and selling coal from its mines in Cambria County, Pennsylvania, in the open bituminous coal markets, and that it controlled by leasehold and otherwise a large amount of high grade valuable bituminous coal in the year beginning the 1st of April, 1903, and since that time to the date of the bringing of this suit.

SECOND:— That the Pennsylvania Railroad Company, the defendant, is th owner of and controls a main line and branch line of railroad extending from points nd places in Cambria County, Pennsylvania, and as far west as Pittsburgh, Pa., and as far east as the Eastern territorial limits of the State of Pennsylvania, and is by its charter a common carrier" and a public highway", and made such also by the Constitution and Statute Laws of the State of Pennsylvania.

THIRD:— The plaintiff further avers in this behalf that under the Constitution and Laws of this Commonwealth, as well as at common law, the defendant company as a common carrier organized and created for that purpose and engaged in the transportation of bituminous coal, is by law required to furtnish and provide at all times during

the ordinary conditions and demands of the bituminous coal trade, an adequate and sufficient supply of coal cars owned and in use by it ,and to be provided by it for the transportation of bitiminous coal over its main line and branches for the accomodation and use of the persons, firms and corporations engaged in mining and producing bituminous coal in the regions tributary to defendant's main line and branches, and to let and hire the same to all persons, firms and corporations engaged in mining and producing bituminous coal from the bituminouscoal regions tributary as aforesaid its main line and branches in the Counties of Blair, Cambria, Clearfield, Westmoreland and Indiana and elsewhere, and to let and hire the same to the plaintiff in this action. That the defendant company did not as required by law provide coal cars adequate and sufficient in quantity to meet the ordinary demands of its patrosn, persons, firms and corporations mining and producing bituminous coal in the regions aforesaid, and did not furnish and provide to the plaintiff such adequate and sufficient supply of coal cars as qould enable it to mine, produce and have transported to market during the ordinary conditions and demands of the market for bituminous coal, the amount of coal, it could a d would have mined, produced and shipped, had defendant company performed its duty

in this respect; and that thereby the plaintiff was prevented from mining and producing and having transported to and selling in the market to points and places within the State of Pennsylvania, a large amount of bituminous coal for which it had a demand and market, and which it could and would have mined, produced and have transported had it been furnished with an adequate and sufficient supply of coal cars for such use and purpose, and by reason of which failure in the performance ot its duty and legal obligation, the defendant caused the plaintiff to suffer damage, to wit, damage to the sum of Two Hundred Thousand ($200.000) Dollars.

FOURTH:— That under and by virtue of the charter of the defendant company, as well as by the Constitution and Laws of this Commonwealth, the defendant company was in law bound and required to furnish equal and permit like facilities to all persons, firms and corporations mining, producing and shipping bituminous coal over its main line and branches; and especially as the defendant company bound in law not to make any undue or unreasonable discrimination between persons, firms and corporations engaged in mining, producing and shipping bituminous coal from the Counties of Blair, Cambris, Clearfield, Westmoreland, and Indiana; yet disregarding its duty and legal obligations it

did, between the 1st of April, 1903, and the 1st of April, 1908, unduly and unreasonably give and grant unto other persons, firms and corporations mining and producing bituminous coal, and having the same transported over its main line and branches from the counties aforesaid, the privileges, advantages and facilities which it denied to the plaintiff, and did unduly and unreasonably discriminate against the plaintiff in the distribution of the coal cars upon its main line and branches in use for the transportation of bituminous coal, and did unduly and unreasonably discriminate in favor of the Berwind-White Coal Mining Company, the Keystone Coal and Coke Company, the Columbia Coal Mining Company, and other persons, firms and corporations engaged in mining, producig and shipping bituminous coal, and did by special orders during said period of time covered by this action, give and grant unto the said Berwind-White Coal Mining Company, the Keystone Coal & Coke Company, the Columbia Coal Mining Company, and other persons, firms and corporation engaged in mining, producing and shipping coal, special advantages in the distribution of coal cars, and did unduly and unreasonably discriminate in favor of said Coal Companies named, and other persons, firms and corporations not especially named, and against the

plaintiff. And the plaintiff further in this behalf avers that the defendant company did unduly and unreasonably discriminate against it and in favor of the Berwind-White Coal Mining Company, the Keystone Coal and Coke Company, the ColumbiaCoal Mining Company as well as other persons, firms and corporations, by causing to be transferred to said corporations a large number of coal cars from its ownership, custody and control into the custody and control of said favored shippers, thereby decreasing and diminishing its capacity to transport and carry the bituminous coal for the plaintiff over its main line and branches, and by the transfer of said coal cars from the defendant's ownership and control, did lessen the number of cars which it would otherwise have had for daily distribution to the plaintiff, and did decrease and diminish its pro rata share of coal cars, and its facilities for having its coal transported to markets, and to points and places within the State of Pennsylvanis, and that by said acts of discrimination as aforesaid, did during all of the period of time between the 1st of april, 1903, and the 1st of April 1908, cause great damage to be done to and suffered by the plaintiff, to wit, damages in the sum of Two Hundred Thousand ($200,000) Dollars.

FIFTH:— The plaintiff further in this behalf avers that because of the said several acts of discrimination aforesaid, as well as by reason of the failure of the defendant company to to furnish it with an adequate and sufficient supply of coal cars during the ordinary conditions and demands of the coal trade to have the product of its mines carried and transported to the market (at points and places within the State of Pennsylvania) it was compelled to purchase and did purchase eighty (80) coal cars for the sum or price of Ninety Thousand ($90,000) Dollars, and that subsecuently by reason of the conduct of the defendant company, it was compelled to sell said coal cars and did sell them for the sum of Sixty Thousand ($60,000) Dollars, thereby suffering loss to the extent of Thirty Thousand ($30,000) Dollars, which amount plaintiff claims to recover also in this action, in addition to the amount of damages set forth above arising from the undue and unreasonable discrimination of the defendant company in the distribution of coal cars.

SIXTH:— Plaintiff further avers that because of the inadequate and insufficient supply of coal cars by the defendant company for the transportation of the product of plaintiff's mines, and by reason of the undue and unreasonable discrimination on the part of the defendant in favor of other psrsons,

firms and corporations, as hereinbefore recited, that the plaintiff company in order to keep its mine running, and to keep its organization and force of men together, and to prevent loss from the fixed charges at said mines when the same were standing idle for want of cars to transport its coal, it was compelled to and did sell the Berwind-White Coal Mining Company, a large amount of coal at a price per ton of ten (10) cents below the ordinary contract price, and did thereby suffer a loss of Ten Thousand ($10,000) Dollars, which sum plaintiff also seeks to recover in addition to the damages sought to be recovered because of the undeu and unreasonable discrimination against the plaintiff in the distribution of cars as hereinbefore stated.

KREBS & LIVERIGHT,
Attys. for Plffs.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SONMAN SHAFT COAL COMPANY

VS.,

PENNSYLVANIA RAILROAD COMPANY

No. 322 May Term, 1909

I, WILLIAM T. HAGERTY, Prothonotary of the Court of Common Pleas of Clearfield County, Penn-

sylvania, do hereby certify that the within is a true and correct copy of the original Plaintiff's Statement filed in the above captioned case.

IN WITNESS THEREOF, I hEREUNTO set my hand and the seal of the Court, this 27th day of May, 1953.

(s) Wm. T. Hagerty
WM T. HAGERTY,
SEAL *Prothonotary.*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SONMAN SHAFT COAL COMPANY

VS

PENNSYLVANIA RAILROAD COMPANY

No. 322 May Term, 1909

PLAINTIFF'S AMENDED STATEMENT

The Sonman Shaft Coal Company, the plaintiff, in this action, against the Pennsylvania Railroad Company, the defendant, summoned to answer the plaintiff in a plea of trespass, files this statement of claim and seeks to recover damages which it has suffered because of the illegal and wrongful acts of the defendant, and sets forth the following statement of facts as the foundation of its right to recover, to wit:—

FIRST:— That the plaintiff is a corporation organized and existing under the laws of the State of Pennsylvania for the purpose of mining, shipping and selling coal from its mines in Cambria County, Pennsylvania, in the open bituminous coal markets, and that it controlled by leasehold and otherwise a large amount of high grade valuable bituminous coal in the year beginning the 1st of April, 1903, and since that time to the date of the bringing of this suit.

SECOND:— That the Pennsylvania Railroad Company, the defendant, is the owner of and controls a main line and branch line of railroad extending from points and places in Cambria County, Pennsylvania, and as far West as Pittsburgh, Pa., and as far East as the Eastern territorial limits of the State of Pennsylvania, and is by its charter a "common carrier" and a "public highway", and made such also by the Constitution and Statute Laws of the State of Pennsylvania.

THIRD:— The Plaintiff further avers in this behalf that under the Constitution and Laws of this Commonwealth, as well as at common law, the defendant company as a common carrier organized and created for that purpose and engaged in the transportation of bituminous coal, is by law re-

quired to furnish and provide at all times during the ordinary conditions and demands of the bitiminous coal trade, an adequate, and sufficient supply of coal cars owned and in use by it, and to be provided by it for the transportation of bituminous coal over its main line and branches for the accomodation and use of the persons, firms and corporations engaged in mining and producing bituminous coal in the regions tributary to defendant's main line and branches, and to let and hire the same to all persons, firms and corporations engaged in mining and producing bitiuminous coal from the bituminous coal regions tributary as aforesaid to its main line and branches in the counties of Blair, Cambria, Clearfield, Westmoreland and Indiana and elsewhere, and to let and hire the same to the plaintiff in this action. That the defendant company did not as required by law provide coal cars adequate and sufficient in quantity to meet the ordinary demands of its patrons, persons, firms, and corporations mining and producing bituminous coal in the regions aforesaid, and did not furnish and provide to the plaintiff such adequate and sufficient supply of coal cars as would enable it to mine, produce and have transported to market during the ordinary conditions and demands of the market for bituminous coal, the amount of coal, it could and would have mined,

produced and shipped, had defendant company performed its duty in this respect; and that thereby the plaintiff was prevented from mining and producing and having transported to and selling in the market, a large amount of bituminous coal for which it had a demand and market, and which it could and would have mined, produced and have transported had it been furnished with an adequate and sufficient supply of coal cars for such use and purpose, and by reason of which failure in the performance of its duty and legal obligation, the defendant caused the plaintiff to suffer great damage, to wit. damage to the sum of Two Hundred Thousand Dollars, ($200,000.00).

FOURTH:— that under and by virtue of the charter of the defendant company, as well as by the Constitution and Laws of this Commonwealth, the defendant company was in law bound and required to furnish equal and permit like facilities to all persons, firms and corporations maining, producing and shipping bituminous coal over its main line and branches, and especially was the defendant company bound in law not to make any undue or unreasonable discrimination between persons, firms and corporations engaged in mining, producing and shipping bituminous coal from the counties of Blair, Cambria, Clearfield, Westmoreland and

Indiana; yet disregarding its duty and legal obligations it did, between the 1st of April, 1903, and the 1st of April 1908, unduly and unreasonable give and grant unto other psersons, firms and corporations mining and producing bituminous coal, and having the same transported over its main line and branches from the Counties aforesaid, the privileges, advantages and facilities which it denied to the plaintiff, and did unduly and unreasonably discriminate against the plaintiff in the distribution of the coal cars upon its main line and branches in use for the transportation of bituminous coal, and did unduly and unreasonably discriminate in favor of the Berwind-White Coal Mining Company. the Keystone Coal & Coke Company, the Columbia Coal Mining Company, and other persons, firms and corporations engaged in mining, producing and shipping bituminous coal, and did by special orders during said period of time covered by this action, give and grant unto the said Berwind-White Coal Mining Company, and other persons, firms and corporations engaged in mining, producing and shipping coal, special advantages in the distribution of coal cars, and did unduly and unreasonably discriminate in favor of said Coal Companies named, and other persons, firms and corporations not especially named, and against the plaintiff. The plaintiff fur-

ther in this behalf aversthat the defendant company did unduly and unreasonably discriminate against it and in favor of the Berwin-white Coal Mining Company, the Keystone Coal & Čoke Company, the Columbia Coal Mining Company, as well as other persons, firms and corporations, by causing to be transferred to said corporations a large number or coal cars from its ownership, custody and control into the custody and control of said favored shippers, thereby decreasing and diminishing its capacity to transport and carry the bituminous coal for the plaintiff over its main line and branches, any by the transfer of said coal cars from the defendant's ownership and control, did lessen the number of cars which it would otherwise have had for daily distribution to the plaintiff, and did decrease and diminish its pro rata share of coal cars, and its facilities for having its coal transported to marketm and that by said acts of discrimination as aforesaid, did during all of the period of time between the 1st of April, 1903, and the 1st of April, 1908, cause great damage to be done to and suffered by the plaintiff, to wit, damages in the sum of Two Hundred Thousand (200.000) Dollars.

FIFTH:— The plaintiff further in this behalf avers that because of the said several acts of discrimination aforesaid, as well as by reason of the

failure of the defendant company to furnish it with an adequate and sufficient supply of coal cars during the ordinary conditions and demands of the coal trade, to have the product of its mines carried and transported to the market, it was compelled to purchase and did purchase eighty (80) coal cars for the sum or price of Ninety Thousand (90,000) Dollars, and that subsequently by reason of the conduct of the defendant company, it was compelled to sell said coal cars and did sell them for the sum of Sixty Thousand (60,000) Dollars, thereby suffering loss to the extent of Thirty Thousand (30,000) Dollars, which amount plaintiff claims to recover also in this action, in addition to the amount of damages set forth above arising from the undue and unreasonable discrimonation of the defendant company in the distribution of coal cars.

SIXTH:— Plaintiff further avers that because of the inadequate and in sufficient supply of coal cars by the defendant company for the transportation of the product of plaintiff's mines, and by reason of the undue and unreasonable discrimination on the part of the defendant in favor of other person, firms and corporations, as hereinbefore recited, that the plaintiff company in order to keep its mines running, and to keep its organization and force of men together, and to prevent loss from the fixed

charges at said mines when the same were standing idle for want of cars to transport its coal, it was compelled to and did sell the Berwind-White Coal Mining Company, a large amount of coal at a price per ton of ten (10) cents below the ordinary contract price, and did thereby suffer a loss of Ten Thousand (10,000) Dollars, which sum plaintiff also seeks to recover in addition to the damages sought to be recovered because of the undue and unreasonable discrimination against the plaintiff in the distribution of cars as herein before stated.

KREBS & LIVERIGHT
Attorneys for Plaintiffs.

Now, September 27, 1911, the defendant objects to the proposed amendment to the third, fourth and fifth paragraphs of Plaintiff's Statement as not being authorized by the statutes of amendment and as introducing another and different cause of action and as inroducing cause of action not within the jurisdiction of this Court.

MURRAY & O'LAUGHLIN
Attorneys for Defendant.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

SONMAN SHAFT COAL COMPANY

VS.,

PENNSYLVANIA RAILROAD COMPANY

No. 322 May Term, 1909

I, WILLIAM T. HAGERTY, Prothonotary of the Court of Common Pleas of Clearfield County, do hereby certify that the within is a true and correct copy of the original Plaintiff's Amended Statement, filed in the above captioned case, and further, I do hereby certify that Issue was formed on the Defendant's Petition to Dismiss for Want of Jurisdiction and that, No Answer was filed to the Plaintiff's Amended Statement.

IN WITNESS THEREOF, I hereunto set my hand and the seal of the Court, this 27th day of May, 1953.

(s) Wm. T. Hagerty
WM T. HAGERTY,
Prothonotary.

SEAL